intended to admit the offences alleged against him without qualification. Indeed, the learned DPP Encik Mohd. Shafie had conceded before the learned Judge that in the circumstances of this case an injustice had been done to the respondent. We entirely agree with the learned Deputy Public Prosecutor's concession and we think there is in fact a miscarriage of justice in this particular case. Be that as it may, we are of the view that a plea of guilty by the accused under sub-section 173(b), CPC in the absence of his counsel is not unlawful. The plea should be recorded but not accepted. Thus, whilst the plea itself is perfectly lawful, the acceptance of such a plea in the absence of counsel is bad in law as without counsel's advice the accused could not be said to have understood the nature and consequences of his plea or to have intended to admit without qualification the offences alleged against him. Our answer to the question posed by the Public Prosecutor is therefore in the positive but subject to an important qualification that such plea of guilty should only be recorded but not accepted unless the court is satisfied that the absence of Defence Counsel has been properly accounted for.

Answered accordingly.

MALAYSIAN BAR v. MUTANG TAGAL

[F.C. (Abdul Hamid C.J. (Malaya), Mohamed Azmi & Syed Agil Barakbah F.JJ.) October 16 & December 12, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 195 of 1984]

Legal Profession – Admission of advocate and solicitor – Whether period of pupillage in Sarawak valid for purpose of complying with Legal Profession Act – Whether advocate and solicitor for the purposes of section 3 of the Legal Profession Act – Legal Profession Act, 1976, ss. 3, 13(i) & 16(3).

This was an appeal from the decision of the High Court in allowing the petition of the respondent for admission and enrolment as an advocate and solicitor of the High Court, Malaya – see [1984] 2 M.L.J. 239. The main issue that arose for determination was whether the period of pupillage of the respondent in Sarawak was valid for the purpose of complying with the requirements of section 13(1) of the Legal Profession Act, 1976, having regard to the definition of "advocate and solicitor" in section 3 of the Act. The respondent had served his pupillage in the office of Mr. Peter Chin Fah Kui, an advocate of Sarawak. Mr. Peter Chin Fah Kui had not been enrolled as an advocate and solicitor under the Legal Profession Act, 1976 or the repealed Advocates and Solicitors Ordinanace, 1947. Section 3 of the Legal Profession Act, 1976 provides –

"In this Act unless the context otherwise requires 'advocate and solicitor' and 'solicitor' where the context requires means an advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act".

Held: (1) the words "any written law prior to the coming into operation of the Act" must mean, having regard to the whole of the provisions of the Act, any previous written law that was in force prior to the operation of the Act in West Malaysia, Sabah and Sarawak. The words in section 3 must by necessity refer to any written law in Sarawak, Sabah or West Malaysia repealed by section 152 as and when the Act became applicable to the three parts of Malaysia. The only written law that has been repealed is the Advocates and Solicitors Ordinance, 1947;

(2) in this case Mr. Peter Chin had never been enrolled as an advocate and solicitor either under the Legal Profession Act, 1966 or the repealed Advocates and Solicitors Ordinance and therefore was not an "advocate and solicitor" within the meaning of section 3 of the Legal Profession Act;

(3) the period of pupillage in Sarawak was therefore not valid for the purpose of complying with section 13(1) of the Legal Profession Act, 1976.

Case referred to:

(1) *Samantha Murthi* v. *Attorney-General* [1982] 2 M.L.J. 126.

FEDERAL COURT.

P. Cumaraswamy for the appellant.
Lee Min Choon for the respondent.
P. M. Mahalingam (Senior Federal Counsel), for the Attorney-General.

Cur. Adv. Vult.

Mohamed Azmi F.J. (delivering the Judgement of the Court): This was an appeal by the Malaysian Bar against the decision of the High Court at Kuala Lumpur in allowing the petition of Encik Mutang Tagal for admission and enrolment as an advocate and solicitor of the High Court Malaya. The main issue that arose for determination was whether his period of pupillage in the State of Sarawak was valid for the purpose of complying with the requirement of section 13(1) Legal Profession Act, 1976 having regard to the definition of "advocate and solicitor" in section 3 of the said Act. We had allowed the appeal and made no order as to costs. We now give our reasons.

In June 1980, Encik Mutang Tagal, a Malaysian citizen, passed the final examination for the degree of Bachelor of Laws held by the University of Malaya. He then attended and served a 12-month period of pupillage from February 23, 1981 to February 23, 1982 in the office of Mr. Peter Chin Fah Kui of Messrs Wan Ullok Jugah Chin & Co. at Miri, Sarawak. On February 24, 1982, he filed a petition in the High Court Borneo at Kuching for admission as an advocate under the Advocates Ordinance of Sarawak (Cap. 110) and on April 28, 1982 his petition was granted by the Chief Justice Borneo. He then filed the present petition dated August 19, 1983 for admission and enrolment as an advocate and solicitor of the High Court Malaya under sections 10 and 15 of the Legal Profession Act, 1976. The petition was objected to by the Malaysian Bar and by virtue of amendment by Act A567 to section 16(3), the petition was heard before a single judge instead of three judges of the High Court.

Notice of Objection by the Malaysian Bar contained two grounds, but for the purpose of this appeal we need only state the first ground viz:

"That the Petitioner has failed to comply with Sections 12 and 13 of the Legal Profession Act, 1976 in that he has failed to serve a period of pupillage with an Advocate & Solicitor who has been in active practice in Malaysia for a total period of not less than seven years."

But both here and in the court below, the issue had been narrowed down to the interpretation of the words "advocate and solicitor" in section 13(1) in the light of their definition under section 3 of the Legal Profession Act. In overruling the objection of the Malaysian Bar, the learned Judge felt bound by the Judgment of this court in *Samantha Murthi* v. *Attorney-General*[1] and after quoting a passage from the judgment of Suffian L.P. the learned Judge had this to say:–

"I would like to repeat the opinion of the Federal Court that the intention of the legislature is to treat Sabah, Sarawak and West Malaysia as one country for the purpose of pupillage. The Federal Court went on to say: 'In our judgment the legislature must be regarded as manifesting the same intention when choosing the word Malaysia in section 13(1) of the Legal Profession Act'. That, in my opinion, is as good as saying that the legislature must be regarded as manifesting the same intention when enacting section 13(1) of the Legal Profession Act. Therefore I feel bound by that opinion of the Federal Court to hold that the words 'advocate and solicitor' in section 13(1) of the Act includes an advocate called to the Sarawak Bar under the Advocates Ordinance of Sarawak because such interpretation would facilitate the intention of the legislature to treat Sabah, Sarawak and West Malaysia as one country for the purpose of pupillage."

The learned Judge also relied on another passage in the judgment of Suffian L.P. and concluded by saying that in this particular case it was possible and proper to construe the Act purposively.

In our view the learned Judge failed to appreciate the *ratio decidendi* in *Samantha Murthi case (ante)* nor did he distinguish the facts of that case with the present one. In that case the petitioner had read in Chambers in Kuching in the office of Mr. Reddy. Although the petitioner's master Mr. Reddy had been admitted to practise as an advocate and solicitor in the High Court Malaya before migrating to Sarawak where he had been in active practice as an advocate at the Sarawak Bar, objection was taken against Samantha Murthi's petition for admission on the ground that after migrating to Sarawak, Mr. Reddy did not hold a practising certificate authorising him to practise in the States of West Malaysia and as such it was argued that chambering under him as a master did not satisfy the requirement of section 13(1) of the Legal Profession Act with regard to period of pupillage by the petitioner. Three judges of the High Court upheld the objection and held that Mr. Reddy could only be a section 3 advocate and solicitor who was in practice if he held a practising certificate issued under section 29 of the Act. Allowing the petitioner's appeal, Suffian L.P. in delivering the judgment of this court had this to say at pages 127 and 128:–

"What is in dispute in this case is the meaning which we should give to the phrase 'active practice in Malaysia' in section 13(1). As earlier stated, that section provides that 'a pupil shall serve his period of pupillage with an advocate and solicitor who is or has been in active practice in Malaysia etc.' Thus there are two requirements: First, the master must be

(1) 'an advocate and solicitor' within the meaning of section 3 of the Act; and

(2) he 'is or has been in active practice in Malaysia'.

The learned Judges in the High Court ruled that Mr. Reddy is not an advocate and solicitor under section 3 because he does not hold a practising certificate issued under section 29 of the Act authorizing him to practise at the Malayan Bar.

With respect we do not agree with this ruling, because there is nothing in section 3 to say that he must be in possession of such a certificate. In fact Mr. Param Cumaraswamy conceded that Mr. Reddy is an advo-

cate and solicitor under section 3. Under this section an advocate and solicitor is defined as:

'an advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act.'

This section does not say that to be an advocate and solicitor one must have a practising certificate. In our judgment Mr. Reddy is an advocate and solicitor within the Act although he had no practising certificate under the Act. As long as he has been 'admitted and enrolled' under the Act or any previous written law, he is an advocate and solicitor within the meaning of the Act. A practising certificate is not a requirement of section 3, but of section 29, which has nothing to do with the definition."

Thus, on the facts there was one crucial distinction between the present appeal and the *Samantha Murthi case.* Unlike Mr. Reddy, Mr. Peter Chin Fah Kui, the master of the present petitioner, had never been enrolled as an advocate and solicitor either under the Legal Profession Act, 1976 or the repealed Advocates and Solicitors Ordinance, 1947.

On the law it was clear from the judgment of Suffian L.P. that for the purpose of complying with section 13(1) of the Legal Profession Act as to the period of pupillage, the master of the petitioner must be firstly "an advocate and solicitor" within the meaning of section 3, and secondly he must be a person who had been in active practice in Malaysia. If the learned Judge had posed these two requirements in respect of Mr. Peter Chin, he would have found no diffieulty in coming to the right conclusion.

Now let us apply the two tests. There was no dispute regarding the second test as it was common ground that Mr. Peter Chin was an advocate enrolled under the Advocates Ordinance of Sarawak and at the time when the petitioner was serving under him as a pupil he was and had been in active practice in Miri and therefore as a master, he was and had been in active practice in Malaysia.

As regards the first test however there was an issue to be determined on whether Mr. Peter Chin was an "advocate and solicitor" within the meaning of section 3 of the Act. The relevant part of this section provides: –

"In this Act unless the context otherwise requires 'advocate and solicitor', and 'solicitor' where the context requires means an advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act".

Mr. Peter Chin would satisfy this requirement if it could be shown that he had been enrolled as an advocate and solicitor under the Act or had been enrolled under the Advocates & Solicitors Ordinance, 1947 – the law prior to the coming into operation of the Act in West Malaysia.

We must emphasize that the present dispute would not have arisen had the Legal Profession Act been extended to Sabah and Sarawak. As it stood, the Act came into operation only in the States of Malaya (West Malaysia) with effect from June 1, 1977. Section 2 provides that the Act shall apply throughout Malaysia but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make; and such Order shall be published in the *Gazette.* It was common ground that the Act had not been extended to Sabah and Sarawak with or without modifications. Until so extended, the "Malaysian Bar" would remain but a new name for the Bar Council Malaya under the repealed Advocates and Solicitors Ordinance 1947 and not the intended unified Bar of the Legal Profession of the whole of Malaysia. The vital consequence of extending the Act to Sabah and Sarawak would be the repeal of Advocates Ordinance Sabah (Cap. 2) and Advocates Ordinance Sarawak (Cap. 110) by virtue of section 152(2) of the Act. Until the happening of this auspicious event, the term "under any written law prior to the coming into operation of this Act" in the section 3 definition of "advocate and solicitor" can only mean the repealed Advocates and Solicitors Ordinance, 1947. Thus, until extension of the Act to Sabah and Sarawak with or without modifications, an advocate of Sabah and Sarawak cannot claim automatic admission and enrolment to the Malaysian Bar. In the context of pupillage requirements under section 13(1) we did not find the words "advocate and solicitor" in section 3 required the meaning of an "advocate" under the Advocates Ordinance of Sabah and Sarawak. To conclude otherwise would be to go against the plain and ordinary meaning of the words used by the Act. In anticipation of the Act being extended piecemeal to the whole of Malaysia, the legislature has made provision for preserving the rights and obligations of "advocates" in Sabah and Sarawak enrolled under the two Ordinances after the Act has come into operation there, in the same way that the Act has provided for advocates and solicitors enrolled under the repealed Advocates and Solicitors Ordinance 1947 in West Malaysia. It is therefore apparent why the term

"advocate and solicitor" has been so defined in section 3. When the Act has been extended to Sabah and Sarawak, section 152(2) provides that the Advocates Ordinance of the two States shall be repealed and as such any master in the two States must be a person who is either an advocate and solicitor enrolled under the Act or an advocate enrolled under the repealed Advocates Ordinance of Sabah or Sarawak. This must be the meaning of the term "advocate and solicitor" in section 3 intended by the legislature. To attach any other meaning to the definition would, in our view, produce anomalies and absurdities. Mr. Lee Min Choon, counsel for the respondent, in effect argued that so long as the master was enrolled under the Advocates Ordinance of Sarawak prior to the coming into operation of the Legal Profession Act in West Malaysia, it would be sufficient. In short, the Advocates Ordinance of Sarawak should somehow be read into the Legal Profession Act although the Act is only applicable to West Malaysia and has not come into operation in Sarawak. Surely the provisions of section 1(2), section 2 and section 152(2) of the Act do not permit the Advocates Ordinance of Sarawak to come under the definition of "any written law" in section 3 until and unless the Act has been extended to Sarawak with such modifications as may be necessary. Otherwise the whole object of the Act to consolidate the law relating to the legal profession and to establish a unified Bar for the whole of Malaysia would be defeated. If Mr. Lee's interpretation were correct, then we would not be construing the Act purposively as there was no more purpose or urgency in extending the Act to Sarawak since any advocate enrolled under the Advocates Ordinance of Sarawak from June 1, 1977 onwards, should be deemed an advocate and solicitor under the Act. In construing the words "any written law" in section 3, the whole definition must be construed in the light of other provisions in the Act. We did not agree with Mr. Lee's submission that although the Act had not been extended to Sarawak and notwithstanding that the Advocates Ordinance was still in force, the words "any written law" must include the Advocates Ordinance of Sarawak merely because the said Ordinance was a written law prior to the coming into operation of the Act in the States of West Malaysia. In our view the words "any written law prior to the coming into operation of the Act" must mean, having regard to the whole provisions of the statute, any previous written law that was in force prior to the operation of the Act in West Malaysia, Sabah and Sarawak. The words in section 3 must by necessity refer to any written law in Sarawak, Sabah or West Malaysia repealed by section 152 as and when the Act became applicable to the three parts of Malaysia. As stated earlier, the only prior written law that had been repealed was the Advocates and Solicitors Ordinance 1947. Indeed, in the *Samantha Murthi case (ante)* Suffian L.P. held that "as long as he has been 'admitted and enrolled' under the Act or any previous written law, he is an advocate and solicitor within the meaning of the Act."

In the present appeal there could be no dispute that Mr. Peter Chin could not satisfy the first requirement. He had never been enrolled as an advocate and solicitor either under the Legal Profession Act or the repealed Advocates and Solicitors Ordinance. Before us the objection of the Malaysian Bar was supported by Mr. Mahalingam for the Attorney-General, and for reasons already stated the objection should be upheld and the order of the High Court allowing the petition must be set aside.

Order accordingly.

Solicitors: *Lee Min Choon & Co.*

PIE BIN CHIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Wan Yahya J.) January 10, 1983]
[Melaka – Criminal Appeal No. 18 of 1982]

Criminal Law and Procedure – Charge of corruption – Defective charge – Whether defence prejudiced – Evidence of accomplice – Corroboration – Prevention of Corruption Act, 1961, ss. 4(a) & 14 – Criminal Procedure Code (F.M.S. Cap. 6), s. 422.

Bribery and Corruption – Charge of – Evidence – Corroboration – Wife of complainant not ipso facto an accomplice.

The appellant was charged under section 4(a) of the Prevention of Corruption Act. It was alleged that in the capacity of agent of the government of the Federation he accepted various sums as gratification in respect of his principal's affairs. The main evidence against him came from the complainant who was held to be an accomplice. The learned President of the Sessions Court believed the complainant's evidence as a whole and in particular to the sums which were alleged to have been paid to the appellant. He looked for corroboration and found the required corroboration from the evidence of the wife of the complainant as well as another witness. The appellant was